

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Perry D. Barse
Mayor ~~Perry~~ Barse
City of Vineland
640 Eastwood Street
Vineland, New Jersey 08360

Re: Notice of Violation of Terms of Prospective Purchaser Agreement No. 97-0103 Between City of Vineland and the United States Environmental Protection Agency for Portions of the Vineland Chemical Superfund Site - Now Vineland Industrial Park

Dear Mayor Barse:

Congratulations upon your election as Mayor of the City of Vineland. We must inform you, unfortunately, that the City of Vineland ("the City") has violated the terms of the 1997 Prospective Purchaser Agreement ("Agreement") the City entered into with the United States Environmental Protection Agency ("EPA"). The City entered into this Agreement in connection with its purchase of Block 139 Lot 12 on the Vineland Tax Map ("the Property"). The City developed the property into the Vineland Industrial Park and has since subdivided the property into 18 lots. I understand that the development has been very successful and will bring needed jobs and increased tax revenues to the City.

The City requested the Agreement with EPA to ensure that neither the City nor the parties who might purchase the newly created lots would be held liable for any of the costs of cleaning up the arsenic contamination on the Property in and around the Blackwater Branch. This contamination had led to the inclusion of the Property as part of the Vineland Chemical Superfund Site. The Agreement provides that in consideration of the City's compliance with the terms of the Agreement, EPA covenants not to sue the City or its successors in interest for the cost of the remedial work on the Property. The Agreement also references the environmental easements and restrictions on the Property.

Over the last three years, EPA has tried to work with the City and its attorneys to secure the City's compliance with the terms of the Agreement. This effort has not been successful. Although the City paid the required consideration of \$10,000, it has not complied with other provisions of the Agreement, particularly those in Section V regarding access and notice to successors in interest prior to the transfer of the subdivided lots within the Property. Under Paragraph 23 of the Agreement, EPA reserved its right to bring a claim against the City based on its failure to meet the requirements of the Agreement.

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The City has not complied with the following provisions of the Agreement:

1. Paragraph 17 -
 - Within 30 days after the effective date of the Agreement, the City shall record a certified copy of the Agreement with the Cumberland County Clerk
 - Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to the Agreement.
 - A copy of these documents should be sent to the persons listed in Section XV, the Notices and Submissions section of the Agreement.

After several requests, the City Solicitor forwarded a copy of the original recorded Agreement to me (although not to the other listed parties.) However, the City did not include the required notice in any of the subdivision documents or any of the deeds transferring lots within the Property to new owners. Nor did the City forward copies of any of these deeds to EPA or the Department of Justice. This failure is very significant since it goes to the major purpose of the Agreement; that is, to ensure that all subsequent purchasers are not only aware of the agreement and the restrictions on the Property, but that they agree to abide by the restrictions and grant EPA the access it needs to remediate the Property.

2. Paragraph 18 -
 - The City shall insure that all successors in interest shall provide the same access and cooperation.
 - The City shall ensure that any transfers of the Property are consistent with the terms of the Agreement.

As noted above, the City has not included any reference to the Agreement in its contracts for sale or deeds and has not insured that successors in interest shall provide the access and cooperation EPA needs to conduct the remedial work. Nor has the City ensured that transfers of the Property are consistent with the terms of the Agreement. In fact, the transfers are not consistent with the Agreement. In particular, the deeds fail to reference the environmental easements and restrictive covenants on the Property.

3. Paragraph 30 -
 - Those rights and benefits conferred upon the City may be transferred to any person with the **prior** written consent of EPA.

In no case, did the City request that these rights and benefits be transferred. Several of the purchasers of lots within the Vineland Industrial Park have requested that EPA transfer the rights and benefits conferred on the City by the Agreement to them. Only in the case of Lucca Freezer did EPA grant such a request prior to the actual transfer and then the City did not follow up by issuing a deed that conformed with the terms of the Agreement. Although EPA is willing to transfer the benefits to all the purchasers of lots within the Vineland Industrial Park, no party other than Lucca Freezer has agreed to accept all the restrictions. EPA has been discussing the transfers of the covenant not to sue and the issue of a proper deed with other purchasers. All, however, have completed their purchases without resolving the issues.

4. Paragraph 32 -

- In the event of a transfer of the Property, the transferor [the City] shall continue to be bound by all the terms and conditions of the Agreement. Moreover, prior to or simultaneous with any transfer of the Property, the transferee must consent in writing to be bound by the terms of the Agreement, including but not limited to, the certification requirement of Section VII of the Agreement. The Covenant Not to Sue shall not be effective with respect to any transferees who fail to provide such written consent to EPA.

The City has not complied with this provision in ensuring that transferees consent in writing to be bound by the terms of the Agreement. Only Lucca Freezer, at the behest of its attorney, provided the proper consent prior to its purchase of lots within the Vineland Industrial Park. Because the City has not complied with the provisions of the Agreement, it does not have a covenant not to sue by EPA to protect itself or any of the subsequent purchasers, including Lucca Freezer, from possible liability for the costs of remediating the Property.

We congratulate the City for its success in developing this Brownfields property into a major asset for the citizens of the City. We also recognize that because of the extensive arsenic contamination created by the Vineland Chemical Company, any future development in this immediate area depends on cooperation between EPA and the City. While EPA is willing to make every effort to assist communities in developing Brownfields properties into productive assets, EPA will be extremely reluctant to enter into Agreements for any of the other properties in Vineland because the City has demonstrated its inability or unwillingness to comply with the terms of a Agreement.

I understand that you have taken office just this month and are not responsible for the problems described above. I request that you have your attorneys contact Ms. Virginia Curry of the Office of Regional Counsel to discuss this matter and determine what steps might be taken to enable the City to obtain the benefits of this Agreement.

Sincerely yours,

Richard J. Caspe, Director
Emergency and Remedial Response Division

cc: S. Lieberman, Esquire
G. Wodlinger, Esquire
R. Tedesco, Esquire

bcc: M. Westgate ERRD